

RESTRICTION

Applicant acknowledges the Examiner's withdrawal of the Restriction Requirement in view of Applicant's arguments in the paper filed October 16, 2002.

35 U.S.C. § 103 KORSGAARD/KUNZEL REJECTION

Claims 1-37 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 85/00188 to Korsgaard in view of WO 96/33321 to Kunzel. This rejection, insofar as it pertains to the presently pending claims, is respectfully traversed for the following reasons.

Applicant respectfully submits that Korsgaard is directed to a vapour barrier including two layers of vapour impervious material. Both vapour impervious layers are provided with openings in order to permit the passage of vapor and water. Applicant respectfully notes that no teaching or suggestion has been identified in Korsgaard that would suggest to one of ordinary skill in the art that the two vapour-impervious layer vapour barrier is in any way unsatisfactory. Applicant, therefore, respectfully contends that Korsgaard provides no teaching, suggestion, or motivation for the addition of a vapour-impervious material.

Applicant also respectfully submits that the secondary reference, Kunzel, is directed to a vapour barrier including a layer of vapour pervious material in order to permit the passage of vapour. Water vapour transmission in Kunzel varies with relative humidity. Applicant respectfully contends that nothing in Kunzel teaches or suggests providing the vapour pervious material within a multi-laminate vapour impervious material.

In order to establish a prima facie case of obviousness sufficient to maintain a rejection under 35 U.S.C. § 103(a), three criteria must be met. First, there must be some suggestion or

motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings in the manner suggested. Second, there must be a reasonable expectation of success. And third, the prior art references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The initial burden is on the Examiner to provide some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the Examiner must present a *convincing line of reasoning* as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972,973 (Bd. Pat. App. & Inter. 1985) (emphasis added).

Applicant respectfully contends that, particularly in light of the substantial differences between the layers taught therein, neither of the applied references can fairly be said to provide any motivation for the proposed combination. Applicant further contends that the present action fails to provide the required "convincing line of reasoning" as to how one of ordinary skill in the art would be motivated to make the proposed combination in order to solve a problem not recognized by Korsgaard or Kunzel. Similarly, Applicant contends that one of ordinary skill in the art would be unable to combine the fundamentally different layers taught by Korsgaard and Kunzel with any reasonable expectation of success and without undue experimentation.

Applicant respectfully contends that the degree to which the applied references would have to be modified to produce the claimed invention would substantially depart from the principles taught in the prior art references and are not, therefore, sufficient to support an obviousness rejection. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). Applicants respectfully contend, therefore, that the present rejection lacks the required textual support in the applied references and requests that it be withdrawn.

Applicant respectfully submits that independent claims 1 and 28 as well as dependent claims 2-27 and 29-37 are allowable for the reasons set forth above. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

Finally, even if one of ordinary skill in the art would consider the combination of features of Korsgaard and Kunzel, as proposed by the Examiner, the skilled person still would not arrive at the claimed invention. A true combination of the features of Korsgaard and Kunzel would result in the water vapour barrier comprising two layers of a vapour pervious material having a water vapour transmission varying with the relative humidity. In contrast, exemplary independent claim 1 of the present invention recites a water vapour barrier comprising a first water impervious membrane having a plurality of openings and a second water impervious membrane, wherein at least part of second water impervious membrane includes a material having a water vapour water diffusion resistance, which varies with the relative humidity of the air in contact therewith. Accordingly, applicant respectfully submits that independent claim 1 is allowable for at least this additional reason.

CONCLUSION

In view of the above remarks, reconsideration of the rejection and allowance of claims 1-37 is respectfully requested.


Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John A. Castellano at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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By



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